CONSIDERATIONS WHEN CHOOSING

Written by: Anne Novak

Choosing a trustee for your estate plan can get you thinking in many directions.

Who do I trust with my money?
Who would work best with my beneficiaries?
Who is qualified for the job?

You probably ask yourself many questions when going through the exercise of reviewing or updating your estate planning documents. The bottom line is this: being a trustee is a major responsibility, and making the right choice is critical to your planning. This article will discuss a brief overview of trustees' duties.

- A trustee is a person, bank, or law firm which holds legal title to property for another person, called a beneficiary. The trustee acts as a fiduciary with respect to the trust's beneficiaries, both current and any remainder beneficiaries. The trustee is held to a very high standard and due care.

- Since a trust is their road map, the trustee should read it carefully and have a good understanding of its provisions. Income may or may not need to be distributed annually. Principal out of the trust could be prohibited by the terms. Therefore, having the knowledge of the terms is a fundamental step to the fiduciary duties.

- The investments in the trust should be prudent; no investment should be speculative or risky. While investing, balancing current and future beneficiaries can be tricky, so all beneficiaries should be taken into consideration. For instance, a current beneficiary who is only entitled to income may want the investments to generate as much income as possible. However, this strategy could be detrimental to the future beneficiaries who are solely looking for growth. The intended use of the funds, the age, the term, etc. all need to be considered by the trustee in determining an investment plan for the trust. Communicating these objectives to the investment advisor is critical.

- Beneficiaries may come to the trustee from time to time asking for a distribution. The trustee needs to rely on the terms of the trust as well as their discretion as to whether to make distributions. Current and future needs, other sources of income, and the responsibility to the other beneficiaries all need to be evaluated before making any decision. Although it may be difficult, the trustee must be able to say no.

- Accurate accounting is vital. Keeping track of income, distributions, and expenses is very important as a trustee. Sometimes, the trust mandates that account information to go to the beneficiaries annually. Tax returns may need to be filed, as well as tax payments. Good recordkeeping is essential to handing over accurate records to the tax preparer.

- Trustees are entitled to receive fees for their services, and this includes family members. Banks, trust companies, and law firms, typically charge a percentage of the funds under management. Some may charge for their time. Many factors can play into what is reasonable. The size of the account, the work involved, the professional experience of the trustee, and other expenses or fees are all factors.

- Lastly, delegation of a trustee responsibility is not allowed, however, delegating the different functions discussed above can be. Financial advisors, accountants, and lawyers can advise the trustee on decisions. The trustee may find comfort in knowing they are receiving professional and expert advice, making their job easier.

Acting as a fiduciary can be difficult but gratifying. Making the right choice is important.